THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of Case

W.P. No. 1225 (M/S) of 2001, decided on 11-9-2003

(Old No. 12374 of 2000)

Smt. Vandana Verma Vs. State of U.P. & others

A.F.R. (Approved for reporting)

~~Not approved for repor~~ting

Date Initials of Judge

11/9/2003

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.1225 (MS) of 2001

(Old No. 12374 of 2000)

Smt. Vandana Verma wife of Sri Krishana Lal
Verma R/o Verma Niwas, Curuteg Bahadur Nagar
Haldwani ……..…….Petitioner

Versus

1. State of U.P.
2. The Principal, Departmental Education and Training Institute Bhimtal, District Nainital
3. The Registrar, Departmental Examination U.P. Allahabad

Sri P.S. Adhikari, Advocate for the petitioner.
Sri N.C. Gupta, Standing Counsel & Sri B.S.Verma, Standing Counsel U.P. for the respondents.

Hon'ble Rajesh Tandon J.

By this writ petition the petitioner has sought writ of mandamus directing the respondents to admit the petitioner in Basic Training Course (B.T.C.)

Brief facts giving rise to this writ petition are that after passing High School Examination in the year 1982, the petitioner joined training centre of Girls, Nainital called Combined Annual Training Camp GD-VI and obtained certificate to that effect. According to the petitioner she is permanent resident of District Nainital. According to the certificate issued by the Collector, Nainital she belongs to Other Backward Class (OBC) reservation category of "Sonar Community" called Verma in hill region of Kumaon and has been mentioned in G.O. No. 1314/25-781/1986 dated 17.9.1958 and is fully entitled to get the benefit including reservation in all the categories mentioned

therein for the public service as well as education as training institute. Copy of which is annexure V to writ petition.

The petitioner has applied for getting admission in Basic Training Course (B.T.C.) and has qualified entrance test. Thereafter in compliance of the direction dated 10.1.2000 the petitioner has reported to the institute with all her documents, which she was required to produce. According to the petitioner when she reached the Training Centre she was required to submit Schedule Tribe Certificate and only then she was entitled for admission in the training centre. The petitioner, therefore, was deprived of admission in B.T.C., inspite of the fact that she has qualified the entrance examination as OBC candidate. The present writ petition has been filed by the petitioner by which the petitioner has been deprived of her admission in B.T.C.

I have heard the learned counsel for the parties.

Before I consider the case of the petitioner on merits, I may quote a passage regarding Universal Declaration of Human rights from the judgment of the Apex Court in W.P. No.350 of 1993 Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697, as under:

"The Universal Declaration of Human Rights, 1948 provides for 27 rights. Right of Education is also one of the human rights. Article 26 reads thus:

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children."

On 8th March 2000 at the time of filing of writ petition Allahabad High Court has passed the following order which was self-sufficient and by virtue of the order, petitioner should not have been deprived of her admission, as it is an admitted case that the petitioner was under the category of OBC. The order is quoted below:

प्रतिपक्षी सं0 1, 2 व 3 की ओर से विद्वान स्थायी अधिवक्ता ने नोटिस स्वीकार किया है और दिनांक 27 मार्च 2000 से प्रारम्भ होने वाले सप्ताह की सूचीवद्व किया जाय। याची के अनुसार उसका चयन बी0 टी0 सी0 की प्रवेश परीक्षा में ओ0 बी0 सी0 कोटे के अर्न्तगत हो गया है लेकिन प्रतिपक्षी उसे अनुसूचित जाति के सर्टीफिकेट मॉग रहे है इसलिए मैं उचित समझता हूँ कि यदि याची का चयन ओ0 बी0 सी0 कोटे में हो गया है तथा उसने सम्पूर्ण कागजात सम्बन्धित अधिकारी के समक्ष प्रस्तुत कर दिया है तो उसे प्राविधिक रूप से provisionally प्रवेश दिया जाय अथवा उक्त तिथि तक कारण बतायेंगे यदि याची को इस आदेश के तहत प्रवेश दे दिया जाता है तो यह प्रवेश प्राविधिक रहेगा तथा उक्त परीक्षाफल धोषित नही किया जायेगा

Hon'ble Supreme Court in the case Jagdish Negk vs. State of U.P. (1997) 7 SCC 203, held as under:

"As we have notices earlier during the pendency of this writ petition it has transpired that the first respondent has not only continued the statutory scheme of reservation of 27 per cent for educationally and socially backward class of citizens of U.P. as per the Reservation Act, but government orders have also been issued

from time to time from 1995 to 1997 clearly indicating that residents of Uttarakhand region are being treated as socially and educationally backward class of citizens presumably in the light of two decisions of this Court to which we will make a reference shortly. The secretary, Government of U.P. Ramesh Yadav, by communication dated 6.11.1995 addressed to the Vice-chancellor, G.B. Pan tAgricultural and Technological University, Pant Nagar, has observed that "the Hon'ble High court on the basis of State of U.P. v. Pradip Tandon has held that the residents of Uttarakhand be treated as socially and educationally backward classes of citizens and in the background of the above-mentioned judgements of the Hon'ble Supreme Court and the High Court the Government of U.P. after proper and due consideration has decided that all residents of Uttarakhand excluding Scheduled Castes and Scheduled Tribes who are already covered by reserve quota will be added to the list of Other Backward Classes for the purpose of reservation. Accordingly in view of the all India status of your University you are directed to admit all non-Scheduled Caste and non-Scheduled Tribed candidates of Uttarakihand, within the quota fixed for Other Backward Classes on merit, along with the candidates of other districts, which will not exceed 27 per cent

The Government has also decided that for the Horizontal Reservation of each category, the number of seats be compartmentalised as under:

Schedule Caste	21 per cent
Schedule Tribe	02 per cent
Other Backward Classes	27 per cent
General Category	50 per cent

The total seats be divided and mentioned as above for CPMT 1996 Brochure for the necessary action."

A Counter affidavit has also been filed by respondent no.2. In the counter affidavit in paragraph no.4 it has been mentioned as under:

"That it is correct that the petitioner belongs to other Backward Class (OBC) category and she applied for the entrance Test Examination of B.T.C. in OBC quota. The examination was conducted and the result was declared, which was published in the daily newspaper 'Amar Ujala' pm 13.1.2000 in which the petitioner has been declared successful candidate having her Roll No.6820. Thereafter the Registrar, Departmental Examination, U.P. Allahbad, respondent no.3, sent a list of successful candidates in the concerning institutions in which once of them is in District Institute of Education and Training, Bhimtal, District Nainital. On the basis of the result declared by the Registrar, Departmental Examination U.P. the petitioner was issued a letter on 10.1.2000 asking her to produce her original certificate on 20.1.2000 at 11.00 A.M. before the Principal of the Institution concerned and if all the certificates are found to be correct, as per the list sent by the Registrar, Departmental Examination, then only the candidate can be permitted to join as per result declared by the Registrar, Departmental Examination."

In the same paragraph defence was taken by the respondent no.2 that she has been shown in the list sent by the Registrar, Examination as ST (Female) Arts candidate.

Further it has been mentioned in the counter affidavit that a perusal of comparative chart of the O.B.C. candidates prepared by the Registrar Departmental Examination, the petitioner has been declared successful as S.T. (Female) Arts candidate having obtained total marks 127.94 whereas O.B.C.(Female) candidate, who has been declared successful, has obtained 145.82 marks, and as such, even in

O.B.C. category the petitioner cannot be declared as selected candidate because there was only one seat for OBC category and comparatively Manju Verma has obtained higher marks than the petitioner and as such, the petitioner is not entitled for any relief claimed by her.

Further in paragraph 8 of the counter affidavit it has been mentioned that as the candidate has been chosen as S.T. while the petitioner belongs to OBC hence the matter was referred to the competent authority. Paragraph 8 is quoted below:

"That the contents of paras 10, 11 and 12 of the writ petition are denied as they stand. It is stated that as the candidate had been shown under the scheduled Tribe (Female) Arts category while the petitioner belongs to O.B.C. category candidate, hence the matter was referred to the competent authority, the Joint Director of Education (Training) Allahabad, vide letter no.2753-55/Sewa Purva/99-2000 dated 4.2.2000."

According to the learned counsel for the parties no result has been communicated by the Joint Director as stated in the aforesaid paragraph. However, it has come in the counter affidavit that there was only one seat for OBC category and comparatively Manjoo Verma has obtained highr marks than the petitioner and she has been chosen against OBC category.

Rejoinder affidavit has been filed by the petitioner and in paragraph 8 of the rejoinder affidavit it has been mentioned that so far as the total seats of OBC candidates are concerned the same is available up to 27%.

The petitioner has stated that at the relevant time there were 7 seats reserved for OBC category. However, it is not disputed that more than one seat was available in the category of OBC and as such

petitioner having participated in BTC could not have been deprived admission as she was shown as OBC candidate at the time of entrance examination. Since all the seats of OBC have not been filled up, therefore, the grievance of the petitioner is that she was entitled to appear in B.T.C. examination on the basis of the result of the entrance examination declared by the respondents.

However, according to the established principles, if the respondents have committed any mistake in the record, the petitioner should not suffer on account of the mistake of the respondent. It is really surprising that once the matter was referred to the Joint Director, Education and Training (Allahabad) on 4.2.2000 and till today no decision has been taken in this regard. Under these circumstances the petitioner being at no fault cannot be deprived of her right to admission in B.T.C.

It has been held in 2000 (2) U.P. Local Bodies and Education Cases, 1553(State of U.P. vs. Ifran Ahmad Siddiqui) that no one shall take advantage of his own wrong and likewise no one can get a right in consequence of his own wrong.

Under these circumstances if the respondents have made certain entries, the petitioner cannot be allowed to suffer and as such the Division Bench has rightly pointed out that no one should become rich by inconvenience of others. Latin maxim "*Memo ex proprio acto consequitur axctionem.*"

In *Annuradhin vs. Director U.P. Rajya Shikshak Anusandhan Evam Prakashan 2001, U.P. Local Bodies and Education Cases, 754* in a special appeal the Division Bench of Allahabad High Court has directed that the matter is remanded to the authority concerned. Relevant paragraph is quoted below:

"Under the circumstances this special appeal succeeds and is allowed. The learned Single Judge's view rejecting the writ petition of the petitioner challenging the order passed on representation is set aside. The matter is remitted to the authority concerned for consideration of the petitioner's application for admission to the B.T.C. course for the relevant year or for the subsequent year treating the filing of the certificate by the petitioner as an accomplished fact but later on and not along with the application. In case it is bound that the course for which the petitioner had applied is already or about to complete by passage of time, her application may be considered afresh in accordance with law and the rules for the same course in the subsequent year now available."

In the case of *Mohini Jain Vs State of Karnataka,(1992) 3 S.C.C. page 666* right to education has been held to be flows directly from right to life. The observations of the Apex Court are quoted below:

"Right to life" is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual can not be assured unless it is accompanied by the right to education. The State government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

The fundamental rights guaranteed under Part III of the constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

The "right to education" therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The state is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institution must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.

As already held in Mohini Jain's case that right to education being part of Article 21 of the Constitution of India, the petitioner having already been admitted as OBC candidate in the entrance test and her result could not have been cancelled without giving an opportunity of hearing to the petitioner.

Once the admission was given to the petitioner it was incumbent upon the respondent to given an opportunity to the petitioner before depriving her to continue B.T.C. study.

In the case Eslamic Academy of Education (Supra) the Apex Court has relied upon a passage from Unni Krishnan case (1993) 1 SCC 645 and has observed as under:

"Educational institutions, however, cannot grant admission on their whims and fancies and must follow some identifiable or reasonable methodology of admitting the students. Any scheme, rule or regulation that does not give an institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational

institution concerned. However, when the institution rejects some students, such rejection must not be whimsical or for extraneous reasons."

The matter of admission came up for interpretation in *Shahabuddin vs. MDS University, AIR 2002 Rajasthan l.* It has been held as under:

"Therefore, to enforce rectitude and probity in the admission procedure at such a belated stage does not reflect their sincerity to the cause for the authorities while enforcing rules of admission ought to bear in mind the practical fall out of their action and cannot be permitted to initiate enquiry as and when they choose. The authorities are well within their rights to check the eligibility and antecedents for the students but there has to be a reasonable time limit to this exercise and cannot be stretched to an alarmingly long number of years except of course in unusual and exceptional circumstances. But when the information and the material to be checked was already before them at the time of admission as it has been in the instant case, questioning the eligibility at the fag end of the course is certainly not justified."

In the present case that cancellation of the admission of the petitioner having been made without any opportunity to the petitioner. It is also against the principles of natural justice as right to reason is an indispensable part of a sound judicial system as held by the Apex Court in the case *State of West Bengal vs. Atul Krishna Shaw AIR 1990 SC 2205* as under:

"Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself."

In view of the admission made by the respondent in his counter affidavit that the petitioner was admitted in the entrance test as O.B.C. candidate and she belongs to O.B.C. category and realizing this the matter was referred to the Joint Director of Education and without waiting the result, the petitioner was deprived from her studies, for all the aforesaid reasons, the writ petition deserves to be allowed.

The writ petition, therefore, succeeds and is allowed. A writ of mandamus is issued directing the respondent to consider admission of the petitioner for B.T.C. provided the petitioner qualifies for admission. No order as to costs.

(Rajesh Tandon, J.)

11.9.2003
Dhyani